

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-213350**DATE:** June 11, 1984**MATTER OF:** Mercury Consolidated, Inc.**DIGEST:**

1. Protest alleging that contracting agency failed to recognize past statistics and actual employment opportunities for federal employees affected by contracting out under Circular A-76 is denied, since situation is largely judgmental matter and, while protester may disagree with contracting agency as to employment outlook, that does not mean that contracting agency's own forecast for its employees is wrong.
2. GAO will not consider allegation that agency made errors in calculating certain costs in Circular A-76 cost comparison where correction of alleged errors would not affect the evaluation result.

Mercury Consolidated, Inc. (Mercury), protests the Navy's decision, pursuant to an Office of Management and Budget (OMB) Circular A-76 cost comparison, to continue government provision of public works services at the Naval Air Station (NAS), Brunswick, Maine, rather than contract out the services to Mercury, the low bidder, under invitation for bids No. N62472-83-B-0880. This protest is an appeal of a Navy review of its initial decision under Circular A-76.

We deny the protest.

Mercury contends that the Navy overestimated the amount of severance pay (payments to employees forced to leave federal service) and retained pay (payments to employees forced to relocate to lower paying jobs within the federal service) the Navy would incur in the event that the services were contracted out. Mercury further asserts that, in calculating relocation costs, the Navy used unrealistic cost estimates. Mercury contends that it was assessed unjustifiably high one-time conversion costs. Mercury further alleges that the Navy understated the number of planner-estimators the Navy needs to perform planning, estimating and inspection services contained in the statement of work

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and that the government's estimate must be adjusted upward to properly reflect the cost of this work. Finally, Mercury asserts the Navy significantly understated its direct labor and fringe benefit costs.

Essentially, Mercury objects to the Navy's assumptions underlying its conclusions regarding the effect of conversion to a commercial contractor on in-house personnel currently performing the work. Costs of the conversion are assessed to the contractor under OMB Circular A-76. Specifically, the protester alleges that the Navy failed to estimate the number of personnel who will be employed by the contractor and, thus, overestimated the amount of severance pay assessed to Mercury, that the Navy did not estimate properly the number of personnel who would be placed in other federal positions in the event a contract was awarded, and that the Navy overstated relocation expenses based on inaccurate and inadequate investigation. According to the protester, a proper measure of the personnel costs would result in the reduction of the costs added to the contractor's bid by approximately \$238,604, which, in combination with the correction of other parts of the costs, would reverse the decision to continue in-house operations.

We generally do not review an agency decision to perform work in-house rather than to contract out for the services because we regard the decision as a matter of policy within the province of the executive branch. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38. Where an agency, however, utilizes the procurement system to aid its decision, specifying the circumstances under which a contract will or will not be awarded, we will review an allegation that the agency did not follow established cost comparison procedures, since a faulty or misleading cost comparison which would materially affect the decision whether or not to contract out would be abusive of the procurement system. MAR, Incorporated, B-205635, September 27, 1982, 82-2 CPD 278.

Initially, we do not find anything in the A-76 guidance that required the Navy to do any more than make an estimate of the impact that contracting out would have upon federal employees. For example, while the cost comparison handbook in effect at the time of bid opening states that historical data from the agency or other agencies can be considered in arriving at the appropriate severance pay and retained pay, it does not make that consideration mandatory. Further, the Transmittal No. 6 modification of the cost comparison handbook only makes mandatory that an estimate be made of the

number of employees who will retire, separate or be downgraded as a result of contracting out. It also provides that the agency estimate the number of employees to be relocated and calculate the costs associated with relocation.

With regard to the protester's allegation that the Navy improperly estimated one-time conversion costs and based its information on a biased survey of personnel, the Navy contends that its cost projections are supported by its records and the survey it conducted was proper. The Navy challenges Mercury's contention that the Navy overestimated the impact on personnel of contracting out. For example, the Navy states that Mercury is not correct in assuming that there are positions at the NAS outside of the study to which those "bumped" by the contractor could be placed. The Navy advises there are a limited number of Navy jobs available. The Navy also states that a relatively high number of distant projected relocations would result because there is only one other major federal employer in the area. Also, the Navy states that Mercury is incorrect in assuming that rather than relocate most displaced employees would choose to take a nonfederal position in the expectation of being placed back in federal service when a position becomes available since an employee loses certain benefits when there is a break in service.

With regard to Mercury's argument that the relocation costs were overstated and based on inaccurate data and inadequate investigation, Mercury specifically contends its own investigation indicates the Navy estimates of average housing sale prices are inflated. The Navy explains that it computed permanent change of station costs in accordance with the joint travel regulations which set forth the allowable items and cost limits. The Navy states it properly based housing sale data on information obtained from base housing referral offices.

The record clearly indicates that Mercury and the Navy disagree as to the costs of a conversion regarding personnel. As we recognized in a recent decision, Mercury Consolidated, Inc., B-213149, May 14, 1984, 84-1 CPD ___, the projection of personnel changes as a result of the decision to contract out is "largely a judgmental matter." The cost comparison procedures do not provide detailed objective standards to follow in calculating the costs of personnel changes which would result from a conversion to a contractor. For example, while Mercury may disagree with the Navy as to the employment outlook for Navy employees or the sale price of houses as a cost of relocation, that does not mean that the Navy's forecast or estimates are wrong.

As indicated above, our review in these cases is directed largely to whether the agency has followed established cost comparison procedures. While there may be a disagreement in this case over the judgment exercised, we do not find that the cost comparison guidance was ignored. Mercury Consolidated, Inc., supra.

Mercury also protests that the Navy underestimated the number of planner-estimators needed to perform the work under the solicitation and understated Navy direct labor and fringe benefit costs. Mercury argues that corrections based on these errors would result in increasing the government estimate by \$205,089 and \$116,612, respectively. However, since the difference after the Navy's cost comparison analysis between the Navy's and Mercury's total figure is \$338,517 and the total figure for these alleged errors is \$321,701, the two alleged errors would not affect the evaluation result. See ARA Services, Inc., B-211710, January 23, 1984, 84-1 CPD 93.

Milton J. Fowler
for Comptroller General
of the United States